

(z) Failure to fund mortgage loans or any other misuse of mortgage loan proceeds;

(aa) Permitting the use of strawbuyer mortgagors in an insured mortgage transaction where the mortgagee knew or should have known of such use of strawbuyers;

(bb) Breach by the mortgagee of a fiduciary duty owed by it to any person as defined in §25.3, including GNMA and the holder of any mortgage-backed security guaranteed by GNMA, with respect to an insured loan or mortgage transaction.

(cc) Violation by a Title I lender or loan correspondent of any of the applicable provisions of this section or 24 CFR 202.11(a)(2).

(dd) Failure to pay any civil money penalty, but only after all administrative appeals requested by the mortgagee have been exhausted.

(ee) Submitting, or causing to be submitted, with an application for FHA mortgage insurance an appraisal, valuation condition sheet, or any other documentation relating to an appraisal that does not satisfy FHA requirements.

(ff) Any other violation of Federal Housing Administration requirements that the Board or the Secretary determines to be so serious as to justify an administrative sanction.

(Approved by the Office of Management and Budget under Control Number 2502-0450)

[57 FR 31051, July 13, 1992; 57 FR 37085, Aug. 18, 1992, as amended at 57 FR 58339, Dec. 9, 1992; 60 FR 13836, Mar. 14, 1995; 60 FR 39238, Aug. 1, 1995; 61 FR 685, Jan. 9, 1996; 62 FR 20081, Apr. 24, 1997; 69 FR 43509, July 20, 2004; 72 FR 73492, Dec. 27, 2007. Redesignated and amended at 73 FR 60541, Oct. 10, 2008]

§ 25.7 Notice of violation.

(a) *General.* The Chairperson of the Board, or the Chairperson's designee, shall issue a written notice to the mortgagee at the mortgagee's address of record at least 30 days prior to taking any action under 12 U.S.C. 1708(c) against the mortgagee. Proof of delivery to the mortgagee's address of record shall establish the mortgagee's receipt of the notice. The notice shall state the specific violations that have been alleged, and shall direct the mortgagee to reply in writing to the Board

within 30 days after receipt of the notice by the mortgagee. The notice shall also provide the address to which the response shall be sent. If the mortgagee fails to reply during such time period, the Board may make a determination without considering any comments of the mortgagee.

(b) *Mortgagee's response.* The mortgagee's response to the Board shall be in a format prescribed by the Secretary and shall not exceed 15 double-spaced typewritten pages. The response shall include an executive summary, a statement of the facts surrounding the matter, an argument, and a conclusion. Such response shall also address the factors listed in §25.8. A more lengthy submission, including documents and other exhibits, may be simultaneously submitted to Board staff for review.

(c) *Exception for letter of reprimand.* Whenever information comes before the Board that discloses a basis for the issuance of a letter of reprimand, the Board may issue the letter without having previously issued a notice of violation.

(d) *Exception for immediate suspension.* If the Board determines that there exists adequate evidence that immediate action is required to protect the financial interests of the Department or the public, the Board may take a suspension action without having previously issued a notice of violation.

[73 FR 60541, Oct. 10, 2008]

§ 25.8 Factors considered in taking administrative action.

In determining which administrative action under 12 U.S.C. 1708(c), if any, should be taken, the Board will consider, among other factors, the seriousness and extent of the violations, the degree of mortgagee responsibility for the occurrences, and any other mitigating or aggravating facts. Where the Board is considering a withdrawal action, the Board will also consider whether the violations were egregious or willful, in order to determine whether a permanent withdrawal is mandated by 12 U.S.C. 1708(c).

[73 FR 60541, Oct. 10, 2008]